Costs Decision

Site visit made on 20 April 2021

by John Dowsett MA DipURP DipUD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 19th July 2021

Costs application in relation to Appeal Ref: APP/M4510/W/21/3267023
107 Northumberland Street, Newcastle-upon-Tyne NE1 7AG

- The application is made under the Town and Country Planning Act 1990, sections 78, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
- The application is made by Maymask (121) Limited for a full award of costs against Newcastle-upon-Tyne City Council.
- The appeal was against the refusal of prior approval for a development described as: Change of use of first and second floors from office accommodation to four apartments.

Decision

1. The application for an award of costs is refused.

Reasons

2. The Planning Practice Guidance (the PPG) advises that costs may be awarded against a party who has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary or wasted expense in the appeal process.

3. The appellant's costs application is predicated largely on the substantive reason that the Council refused prior approval on matters that could have been dealt with by conditions and that it was unreasonable to refuse prior approval on the basis of poor living conditions resulting from fixed non-openable windows.

4. The PPG sets out that refusing permission on a planning ground capable of being dealt with by conditions risks an award of costs, where it is concluded that suitable conditions would enable the proposed development to go ahead.

5. In respect of the first reason for refusal relating to refuse storage facilities within the curtilage of the building, this is not a prior approval requirement and the reason for refusal did not directly reference the highways impacts that the Council rely on. The Planning Officers report is quite brief on this matter although this is elaborated on in the Council's Statement of Case. That said, although the supporting information with the application stated that each flat would have capacity for 64lr of refuse storage, it is not at all clear from the copies of the drawings that I have been provided with where within the flats this storage capacity would be located. It was not until the appeal was lodged, which included the amended drawings illustrating the proposed internal refuse storage areas, that this additional storage was incorporated and the proposed arrangements for collection were clarified.

6. Although ultimately, I did not find the Council's argument persuasive, the Council, nonetheless, submitted evidence that explained the rationale behind this part of the decision and set out why it considered the matter fell within the transport and highways impacts of the development. The appeal has been determined on the basis of the addition information submitted as part of the appeal and it is within that context that the practical details of the manner in which refuse would be collected from the building could have been the subject of a suitably worded condition. However, this additional information was not before the Council when it made its decision. Consequently, whilst I have found that in the particular circumstances of this case the Council's decision on this matter was not correct, this does not mean that it was unreasonable, or that an award of costs is justified.

7. The appellant also asserts that noise mitigation could have been the subject of a condition. As I have set out in the appeal decision, the application submissions did not set out either a detailed scheme or an implementable scheme for noise attenuation. A condition requiring submission of a noise mitigation scheme would effectively by-pass the prior approval process which explicitly requires the effect of noise from nearby commercial premises to be addressed.

8. The appellant has submitted with the costs application some examples of prior approvals that have been granted by the Council with noise related conditions. However, one of these requires implementation of submitted mitigation measures to attenuate noise from a railway and so does not relate to noise from commercial premises falling within the definition of such in the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (the GPDO). There is insufficient information in respect of the other scheme to determine either what noise information was submitted with the application, or whether any noise issues relating to that site are the same as in the present case.

9. Although it may be theoretically possible to provide suitable noise attenuation to the building, in the absence of a detailed scheme to demonstrate how this would be achieved in practice it was not unreasonable for the Council to refuse prior approval on this ground.

10. The Council's reason for refusal makes reference to the general living conditions of the future occupiers. Whilst the use of sealed non-openable windows is not precluded by planning policy, this does not alter the fact that the submitted scheme did not demonstrate that the impact of noise would be suitably mitigated, or that suitable living conditions would be provided for the future occupiers in terms of the internal noise climate. Taken as a whole, I do not find the Council's second reason for refusal to be unreasonable.

11. Whilst the appellant states that the Planning Officers report was not provided to them until after the appeal was lodged, this did not prevent the appellant from lodging the appeal and preparing a statement of case. The Planning Officer's Report and other documents were provided as part of the Council's Appeal Questionnaire return, which is the requirement of appeal process. The appellant had the opportunity to make final comments following the receipt of the Questionnaire documents and the Council's Statement of case and chose not to do so. Consequently, I do not find that the Council acted unreasonably in respect of the procedural requirements of the appeal.

Conclusion

12. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has not been demonstrated.

John Dowsett

INSPECTOR